

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States Courts  
Southern District of Texas  
FILED  
NOV 28 2005  
Michael N. Milby, Clerk

UNITED STATES OF AMERICA                   §  
  
VS.   §       CR-H-04-25 (S-2)  
  
KENNETH L. LAY                               §

**DEFENDANT LAY'S MOTION FOR DISCOVERY**  
**OF 404(b) MATERIAL**

TO THE HONORABLE SIM LAKE, UNITED STATES DISTRICT JUDGE FOR THE  
SOUTHERN DISTRICT OF TEXAS:

Pursuant to Rule 16 of the Federal Rules of Criminal Procedure, Mr. Lay requests  
this Court order the government to immediately produce for discovery all materials  
relevant to the government's 404(b) allegations.

Mr. Lay has attempted to obtain discovery relative to the government's 404(b)  
allegations (Attachment A). The government refuses to cooperate.<sup>1</sup>

The government informed Mr. Lay that it intends to introduce this evidence  
during its case in chief (contrary to the suggested practice in the Fifth Circuit). Mr. Lay  
cannot even begin to oppose the government's effort without fulsome discovery.  
Therefore, Mr. Lay respectfully requests this Court order that the government provide full  
discovery immediately.

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<sup>1</sup> It is impossible to reconcile the government's obfuscation with its repeated claims to this Court that our  
access to discovery in this case is "unprecedented."

Respectfully submitted,



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MICHAEL RAMSEY  
CHIP LEWIS  
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713-523-7878  
713-523-7887 (Fax)



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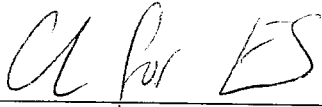


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Of Counsel:

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KENNETH L. LAY



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**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on this 28 day of November, 2005, a true and correct copy of the foregoing Defendant Kenneth L. Lay's Motion for Discovery of 404(b) Material has been delivered to the following, via email:

Daniel M. Petrocelli ([DPetrocelli@OMM.com](mailto:DPetrocelli@OMM.com))  
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1400 New York Avenue, NW  
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\_\_\_\_\_  
CHIP B. LEWIS

# **ATTACHMENT “A”**



U.S. Department of Justice

Enron Task Force

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1400 New York Avenue  
Washington, D.C. 20530  
(202) 616-9468

November 23, 2005

Michael Ramsey, Esq.  
Chip B. Lewis, Esq.  
River Oaks/Welch Building  
2120 Welch  
Houston, Texas 77019

Re: United States v. Causey, Skilling and Lay, CR-H-04-25 (Lake, J)

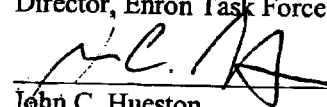
Dear Counsel:

As I represented in court during the status conference, you have been provided with the government's trial exhibits as well as all documentary evidence which the government possesses that is pertinent to this 404(b) matter. The government is in possession of Jencks material which will be disclosed on December 9<sup>th</sup>, assuming the Court rules that the government may introduce this 404(b) evidence in its case-in-chief.

Very truly yours,

SEAN M. BERKOWITZ  
Director, Enron Task Force

By:

  
John C. Hueston  
Assistant U.S. Attorney, Enron Task Force

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Lawyer  
River Oaks/Welch Bldg.  
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November 21, 2005

Sean Berkowitz  
Kathy Ruemmler  
John Hueston  
Robb Adkins  
Cliff Stricklin  
John Drennan

**Via Fax: 713-718-4148**

Re: **United States v. Kenneth Lay – Valhalla Discovery**

Dear Counsel:

We are writing as a final request to discover all Rule 16 materials regarding your Valhalla allegations.

In an effort to understand Mr. Hueston's letter (Attachment A), Mr. Lewis approached him in court. Mr. Lewis asked if the "Defense 404b Inventory" (Attachment B) comprised the entire universe of Valhalla materials collected by the government. Mr. Hueston refused to answer the question. When pressed further, Mr. Hueston stated that there would be a *Jencks* disclosure relative to Valhalla, Mr. Hueston continued to avoid the central question: "Does this (Attachment B) represent the entire universe of Valhalla materials collected by the government?"

Mr. Hueston's obfuscation belies your professed "open file policy." For the sake of clarity, we will restate our request (as previously expressed in our letter to you –Attachment C). Please immediately provide all documents, proposed exhibits and other materials germane to your Valhalla allegations.

We should not have to involve the Court in this matter. Please let us know by Wednesday, November 23, 2005 that you will comply with our request.

Faithfully,

A handwritten signature in black ink, appearing to be 'Michael Ramsey', written in a cursive style.

Michael Ramsey  
Chip Lewis

cc: Dan Petrocelli  
Reid Weingarten



U.S. Department of Justice

Enron Task Force

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1400 New York Avenue  
Washington, D.C. 20530  
(202) 616-9468

November 17, 2005

Michael Ramsey, Esq.  
Chip B. Lewis, Esq.  
River Oaks/Welch Building  
2120 Welch  
Houston, Texas 77019

Re: United States v. Causey, Skilling and Lay, CR-H-04-25 (Lake, J)

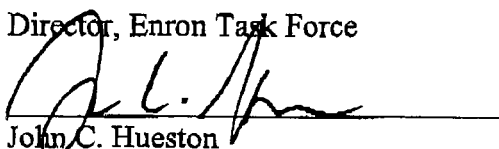
Dear Counsel:

I write in response to your letter of November 16, 2005, in which you demand immediate production of trial exhibits and discovery. As noted in the Government's Notice of Intent and Motion to Introduce Evidence Relating to Lay's Role in the Enron Oil Crisis filed on November 4<sup>th</sup>, trial exhibits relating to this 404(b) item were produced to you that same day. Discovery relating to this matter has been available since November 7, 2005. Consistent with our production of exhibits related to this event on November 4<sup>th</sup>, we intend to introduce this evidence in the government's case-in-chief.

Very truly yours,

SEAN M. BERKOWITZ  
Director, Enron Task Force

By:

  
John C. Hueston  
Assistant U.S. Attorney, Enron Task Force



Michael Ramsey  
Lawyer  
River Oaks/Welch Bldg.  
2120 Welch  
Houston, Texas 77019  

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713/523-7878  
Fax: 713/523-7887  
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November 16, 2005

Sean Berkowitz  
Kathy Ruemmler  
John Hueston  
Robb Adkins  
Cliff Stricklin  
John Drennan

**Via Fax: 713-718-4148**

Enron Task Force

**Re: Valhalla Discovery**

Dear Counsel:

With respect to the Task Force's Rule 404(b) notice, dated November 4, 2005, we request that the government immediately provide to counsel for Mr. Lay all documents, proposed exhibits and other materials germane to this matter in order for us to investigate the allegations set out in your pleading that are over eighteen (18) years old.

As you are no doubt aware, the circumstances and events that transpired in Valhalla, New York were the subject of both an internal and external investigation by company auditors and Arthur Andersen and spawned related federal litigation, including an investigation by the Department of Justice. This in turn resulted in criminal charges being filed and prosecuted against two former company employees. Contrary to your assertion that these allegations can be fully vetted at trial in "less than half a day," we perceive that the matter is inherently complex, potentially involves many more witnesses than you anticipate and will take considerable time and resources to answer and defend. We must get a handle on these alleged events, attempt to contact and interview all witnesses, issue legal process from third parties for relevant documents and evaluate all factual and legal defenses. It is our view that a full and fair airing of the Valhalla accusations will, at a minimum, take several weeks of trial time.

Much of the relevant information and evidence dealing with these events may be difficult, if not impossible, to obtain due to the sheer passage of time. In order to adhere to Judge Lake's trial schedule, the defense will be compelled to investigate and prepare a defense to this matter while we are literally in trial. (We are assuming that the government will not attempt to go into these matters until its rebuttal case, as is the suggested practice in the Fifth Circuit. If we are incorrect, please promptly advise.) In any event, it is imperative that the government make a full and fair disclosure of all evidence concerning these accusations known to it and all cooperating agencies and agents. This request calls for more material than listed in your "Defense Evidence Inventory 404(b)." By way of example, you list one deposition from a civil suit. We must discover all of the depositions to properly investigate and answer your allegations. Please make available now (under the same discovery protocol established for the Conspiracy case and the Bank Fraud case) all information dealing with Valhalla, including *Brady* and *Giglio* information.

Faithfully yours,

A handwritten signature in black ink, appearing to be 'M Ramsey', written in a cursive style.

Michael Ramsey  
Chip Lewis

cc: Daniel Petrocelli  
Reid Weingarten

11/09/2005 16:53 FAX

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U.S. Department of Justice

Enron Task Force

1400 New York Avenue  
Washington, D.C. 20530  
(202) 616-9468

November 7, 2005

VIA FEDERAL EXPRESS

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Michael Ramsey, Esq.  
Chip Lewis, Esq.  
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2120 Welch  
Houston, TX 77019

Re: United States v. Causey, Skilling and Lay, CR-H-04-25 (Lake, J)

Dear Counsel:

Enclosed find ~~an~~ a listing of items relating to the subject matter of a 404(b) motion we filed Friday/October 4, 2005. Should you have questions about the size of specific items on the list, we will of course try and answer reasonable requests about their contents so you can determine whether you want to review them.

Very truly yours,

*John C. Hueston*

John C. Hueston  
Enron Task Force

Enclosure

Rec'd by Fax : Nov 09 2005 4:48PM Fax Station : LAW OFFICE

11/09/2005 10:53 FAX

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## Defense Evidence Inventory 404(b)

1B	Source	Description
2558	ENRON CORP	DOCUMENTS: 4/29/87 AUDIT COMMITTEE MINUTES & AGENDA FILE: 4/30/87 BOARD OF DIRECTORS MEETING MINUTES AND AGENDA FILE ECSP0003578/61-ECSP0003578/18; ONE CD LABELED ECEM00005647 CONTAINING TIF FILES
2561	ENRON CORP	ONE CD-ROM BATES LABELED EIT000002864 CONTAINING BOARD OF DIRECTOR AND AUDIT COMMITTEE MEETING MINUTES FOR INTERNORTH AND ENRON FROM 1985 TO 1990
2564	ENRON CORP	ONE CD LABELED ECEM00005751; DOCUMENT PERTAINING TO VALHALLA; DEPOSITION OF JOHN HARDING- ECSP000358265- SHP000369426; LOUIS BORGET INTERVIEWS- ECSP000359428- ECSP000359578
2565	DAVID WOYTEK	COPIES OF VARIOUS DOCUMENTS PERTAINING TO ENRON OIL (VALHALLA, NY)
2580	ENRON CORP	2-DVD'S (EVEN000005895 AND ECEM00005896) 1/15/87 ENRON EMPLOYEE MEETING (LAV)
2581	ENRON CORP	1-DVD ECEM00005894 10/23/87 ENRON EMPLOYEE MEETING (LAV)
2582	ENRON CORP	1-DVD ECEM00005893 8/7/87 "INSIDE BUSINESS" INTERVIEW WITH KEN LAY
2586	ENRON CORP	ONE CD-ROM BATES LABELED ECEM00005884 CONTAINING DOCUMENTS RELATED TO QUOTES MADE BY KEN LAY, RICH KINDER AND MARK SEIDL DURING 1987. DOCUMENTS BATE LABELED ECSP000358595-ECSP000359665.
2587	ENRON CORP	1-CD ECEM000058931 DOCUMENTS BATE LABELED ECSP000359620-ECSP000359830 LOUIS BORGETS DEPOSITION REGARDING VALHALLA
2588	ENRON CORP	VALHALLA INVESTIGATION DOCUMENTS BATES LABELED ECEM000497093 ECEM000498012
2594	JOHN BEARD	COPIES OF ENRON INTERNAL AUDIT WORKPAPER RELATING TO INTERNORTH INTERNATIONAL OIL
2603	ENRON CORP	10/22/87 PRESS RELEASE: 2 PAGES RE: VALHALLA \$85 MILLION LOSS. BATES LABELED ECSP000360367-ECSP000360388
2610	ENRON CORP	QUOTES MADE BY KEN LAY, RICH KINDER OR MICK SEIDL DURING 1987 - MAY 1987 AND JULY TO DECEMBER 1987 ENRON PEOPLE MAGAZINE (PER JULIA FORD, NO JUNE 1987 MAGAZINE COULD BE LOCATED)
2614	ENRON CORP	ONE CD-ROM, BATES LABELED ECEM000060866, CONTAINING A JANUARY 1987 ENRON NEWS RELEASE BATES LABELED ECEM00065880 - ECEM00065595
2615	SECURITIES AND EXCHANGE COMMISSION	ENRON RESTATED FINANCIAL STATEMENTS FOR 1985, 1986, AND 1987